

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 927 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI  
and  
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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A'BAD GRAIN MERCHAND ASSO.

Versus

STATE OF GUJARAT  
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Appearance:

MRS SANGEETA PAHWA with MS VINITA VINAYAK for  
MR PM THAKKAR for Petitioners  
MR L.R. POOJARI, ASSTT. GOVERNMENT PLEADER for  
Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE R.K.ABICHANDANI  
and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 21/12/2000

The petitioners have questioned the constitutionality of the provisions of Clause 24 of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 and the validity of the order dated 18.9.1984 issued by the respondent No.2, the Deputy Food and Civil Supplies Controller, by which the practice adopted in the trade known as "Dami" was directed to be abolished.

2. According to the petitioners who are grain merchants doing the business in the city of Ahmedabad, there was a tradition in the wholesale food grains market since 1954, of the wholesalers levying a small charge of Rs. 1.60 paise per hundred rupees as "Dami", which word is derived from the word "Dam", which means price or value. According to the petitioners, in 1976 there was some dispute between wholesalers and the retailers about the levy and collection of 'Dami' and the matter came to be referred to the Food and Civil Supplies Department for restraining the wholesalers from collecting the same. However, the Government did not interfere at that time. Again in 1982-83, the dispute was raised and according to the petitioners the Government ultimately succumbed to the pressure of the semi-wholesalers and the retailers and constituted a fact finding committee in order to ascertain whether the system of 'Dami' had any impact on the interest of consumers and the supply of the essential commodities. By a circular dated 20th October, 1983, the Government appointed the committee which submitted its report in July, 1984. According to the petitioners the said committee found that the system of 'Dami' did not have any impact one way or the other on either the price at which the consumer gets the article or the supply of the essential articles in question. It is alleged that the Government, under pressure, issued order dated 18.11.1984, restraining the wholesalers from levying and collecting Dami. The order was purported to have been issued under Clause 24 of the said Control Order, 1981. It is contended that these directions constitute an unreasonable restriction on the fundamental rights of the petitioners to carry on their business guaranteed by Article 19(1)(g) of the Constitution of India. It is also alleged that the directions are arbitrarily given being contrary to the report which was submitted which indicated that the practice of 'Dami' did not affect the supply or distribution of goods. By an amendment made in the petition, the petitioners have challenged the validity of Clause 24 of the said Control Order on the

ground that it violates Articles 14 and 19(1)(g) of the Constitution.

3. The respondent No.3 - Ahmedabad Retail Grain Merchants Association contested the petition by contending in their affidavit-in-reply that 'Dami' system was a vice that had crept in only in the Ahmedabad grain market and no such practice was prevalent in respect of the other commodities or in any other city of Gujarat. It is stated that the abolition of 'Dami' system was beneficial to the public because it would assist reduction in prices and remove price fluctuations in food grains. The Gujarat Fair-price Shop Federation which had a membership of more than 9,000 retailers in Gujarat had passed a resolution for removing the 'Dami' system and the retailers had submitted their representation to the Government for the purpose. It is contended that the wholesalers are levying 'Dami' charges as a type of fixed profit. It is contended that the abolition of 'Dami' system was convenient to businessmen and would help in fair and equitable distribution of grains. According to the respondent No.3, every year about Rs. 4 to 6 crores were being recovered as 'Dami' charges which was a tacit way of profiteering and was against the interest of the consumers and that this also affected the fair and equitable distribution of grains. According to the respondent No.3, it was a profit fixed above any competition adversely affecting the consumers. The Committee gave a report with various appendices showing the price variations, profits, comparative profits etc. According to the respondent No.3, in the light of the facts and circumstances placed before the Government, it had passed an order abolishing 'Dami' system for protecting the rights and interest of the consumers.

4. The State Government in an affidavit-in-reply filed by the Deputy Secretary of the Food, Civil Supplies and Consumer Affairs Department, has taken up a stand that the impugned order abolishing the 'Dami' practice was made to ensure a fair and equitable distribution of the essential commodities. It is stated that 'Dami' was an additional element over and above the price and other incidentals and therefore, it could not be considered as the price or value of the goods. It is stated that the Government considered the report of the committee in its proper perspective and took into account the interest of the consumers and the need to maintain supply of the essential commodity, while making the order. The Government took note of the view expressed by majority members of the Committee that abolition of 'Dami' system was necessary in the interest of the consumers and for

maintaining supply of essential commodity in question. It is stated that the impugned order was made in lawful exercise of the powers of the Government under Clause 24 of the said Control Order.

5. Clause 24 of the said Control Order which falls for our consideration reads as under:-

"24. Power to issue directions to dealer or producer.-- (1) The State Government, the Director of Civil Supplies, the Director of Food, the Collector of a district or any licensing authority may in accordance with the provisions of this order and for ensuring fair and equitable distribution of essential article by general or special order, issue to any dealer or producer or class of dealers or producers such directions regarding maintenance of accounts, maintenance of stocks, storage, sale submission of returns, furnishing information, display of prices, issuance of invoice or cash memo, weighment, disposal, delivery or distribution of any essential article as it or he may deem fit.

(2) Every dealer or producer to whom any direction is issued under sub-clause (1) shall comply with such direction."

It is evident from the provisions of Clause 24 that the power to issue directions to any dealer or producer can be exercised only in accordance with the provisions of the Control Order and for ensuring fair and equitable distribution of the essential article. The word "distribution" is not to be read in isolation. It gets its colour from the object of the Control Order, which is indicated in the preamble and shows that the provisions of the Control Order were enacted as it was found in the opinion of the Government that it was necessary and expedient so to do for maintaining supplies of certain essential commodities and for their equitable distribution and availability at fair prices. The provisions of the Control Order and the objective underlying the enactment provide a sufficient guideline for the exercise of the powers under Clause 24 of issuing directions on the matters enumerated therein. There is therefore no scope for any arbitrary exercise of powers as is sought to be contended on behalf of the petitioners and Clause 24 does not in any manner violate the fundamental right guaranteed by Article 14 of the Constitution of India. The directions for the purpose of

ensuring fair and equitable distribution of essential articles which have to be in accordance with the provisions of the Control Order would constitute a reasonable restriction in the interest of general public on the fundamental right of the citizens to carry on business guaranteed by Article 19(1)(g) of the Constitution and therefore, in our opinion, they are saved by the provisions of Article 19(6) of the Constitution. The Challenge against the constitutionality of Clause 24 of the said Control Order therefore fails.

6. The learned Counsel appearing for the petitioners, on the basis of the copy of the report of the committee which was placed on record, contended that the decision of the Government was not in consonance with the recommendations which were made by the committee. Referring to the copy of the letter dated 13.9.1984 which was placed on record, it was argued that the decision of the Government reflected therein was based on three grounds, one of which was not borne out from the report. It was stated that in areas where 'Dami' practice was not prevalent, there was no adverse effect on the availability of the essential articles. It was contended that this ground was not germane to the decision because in areas where the practice did not prevail the supplies were not affected, would not mean that the supplies were adversely affected in the areas where the practice prevailed. It was contended that there was no indication to show that 'Dami' practice adversely affected the supply and the report of the Committee on the contrary, indicated that 'Dami' practice did not have any adverse effect either on the consumer or on the question of supply of goods. It was also argued that the State Government had not properly appreciated the report and the opinion of various members as reflected therein. On going through the report, we are satisfied that the majority members were of the opinion that 'Dami' practice should be abolished. At one place there is a reference that prices tended to increase in areas where the 'Dami' practice was adopted. On this basis it was argued that price fixation was wholly irrelevant because Clause 24 did not contemplate issuance of any direction in context of the price of goods and contemplated directions in context of distribution of the essential articles. As noted above, the word distribution cannot be read in isolation and keeping in view the object underlying the provisions of the Control Order, it is evident that the directions which secure equitable distribution of essential articles at fair prices can be issued within the ambit of Clause 24. The State Government had taken

into consideration various aspects of the matter and the report of the committee and it will not be open for this Court to sit in appeal over its decision to abolish the 'Dami' practice. It would also not be appropriate for this Court to give any different meaning than what was understood by the State Government, to the report which was submitted before it by the committee. The State Government has acted within the ambit of its powers in taking the decision, warranting no interference by this Court. This petition is therefore rejected. Rule is discharged with no order as to costs.

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